

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

IN THE MATTER OF JACOB YUNGBLUTH and AUGUST W. SCHAFFER, co-partners doing business under the firm name and style of Bank of Hamilton, Jacob Yungbluth & Co. Proprietors, and Bank of Hamilton, A. W. Schaffer & Company, Proprietors; and A. W. Schaffer & Company, Private Bank; Jacob Yungbluth and A. W. Schaffer,
Bankrupts,

No. 3625.

TRANSCRIPT OF RECORD

Upon Appeal from the United States District Court
for the Western District of Washington
Northern Division
and upon
Petition for Revision.

No.

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(TITLE OF COURT AND CAUSE)

NAMES AND ADDRESSES OF COUNSEL.

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Washington.

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Attorney for Bankrupt, Renton, Washington.

I. E. SHRAUGER,
Attorney for Bankrupt, Mt. Vernon, Washington.

L. S. HADLEY,
Attorney for Trustee, Bellingham, Washington.

A. M. HADLEY,
Attorney for Trustee, Bellingham, Washington.

W. H. ABBOTT,
Attorney for Trustee, Bellingham, Washington.

J. W. ROMAINE,
Attorney for Objecting Creditor, Bellingham, Wash-
ington.

C. E. ABRAMS,
Attorney for Objecting Creditor, Bellingham, Wash-
ington.

(TITLE OF COURT AND CAUSE)

BE IT REMEMBERED that on, to-wit: the day of, 1913, the above entitled matter came on for hearing before the Honorable Edward E. Cushman, Judge of the District Court, in the above entitled matter, holding court at Seattle, Washington, at which time the trustee appeared by his attorneys Hadley, Hadley & Abbott, and the bankrupt, Jacob Yungbluth, appearing by his attorney, E. C. Million; and this matter coming on for hearing upon the petition of the bankrupt for review of the decision of the referee herein, the material facts appearing from the record, being as follows:

The petition for adjudication was filed herein on the 21st day of January, 1908, and thereafter the bankrupt herein, Jacob Yungbluth, appeared by his attorneys and contested said petition, which ultimately resulted in a decree of adjudication, and thereafter, and in due and regular course of proceedings and on the 13th day of November, 1911, said bankrupt filed his schedule of property and claim of exemption, and among other things claimed Lots 13, 14, 15 and 16, Block 15 of Hamilton Townsite Company's Second Addition to the Town of Hamilton, Skagit County, Washington, as a homestead and as exempt under the laws of the State of Washington.

That thereafter said Trustee set aside said property as exempt, but that in due course of time certain creditors filed objections to the allowance of the exemptions, and which said objections upon due consideration by the Referee were denied and the said exemptions allowed, and the only question in controversy here is the order of the referee as to the homestead property, which order was and is as follows:

“The referee finds as a fact from all the evidence on said hearing that the sum of \$500.00, evidenced by the bankrupt's promissory note dated in 1907, was borrowed from the Bank of Hamilton, of which the bankrupt was a co-partner, and was and constituted a fraud against the creditors of said bank as well as against the creditors of the bankrupt, Jacob Yung-

bluth; and was and constituted a part of the purchase price of the lots and property occupied by the bankrupt and now claimed as a homestead exemption; and that said homestead property should be charged with the amount due on said note, including interest thereon from the date of said note at the rate therein specified and if no rate is specified for interest in said note, then the legal rate of interest from the date of said note to this date.”

“The referee finds that said sum of \$500.00, with interest as aforesaid, should be offset against said homestead and if not paid, then, an order should be made authorizing and directing the trustee to sell said homestead property and out of the proceeds from such sale pay said note and interest and pay to the bankrupt the remaining proceeds of such sale.”

From that portion of the decision of the referee above mentioned the bankrupt has petitioned for revision and the referee has sent up with his return certain testimony of which the following is all that has any bearing upon the question at issue, to-wit:

Wilbra Colman was called as a witness on behalf of the creditors, and testified as follows:

“Live at Sedro Woolley and am an attorney at law and have intimate knowledge of the affairs of the bank of Hamilton, and was receiver of the same, appointed by the State Court on November 5, 1907. That the books of the bank were burned up on January 9, 1909, and that prior to the burning I made a thorough and exhaustive examination of the books.”

also, as follows:

Q (by Mr. Hadley) Calling your attention to the transaction of the purchase of Lots 12, 13, 14 and 15, of Block 15, of Hamilton Townsite Company's Second Addition to the Town of Hamilton, Skagit County, Washington, I will ask you if you discovered anything from these books regarding that Sylvester property in Hamilton?

A I know any record of the purchase of the Sylvester property that the books showed.

Q Can you state what the books showed with reference to that transaction?

A On June 10, 1905, Yungbluth presented a check that was paid on the Bank of Hamilton to Sylvester for \$600.00 and at the same time gave his note to the bank of Hamilton, being bills receivable 674, for \$600.00, and that prior to that time Mr. Yungbluth had given to Sylvester a check of \$100.00, making a total amount of \$1300.00.

Q At what time, Mr. Coleman?

A June 10, 1905. Mr. Yungbluth had a remnant of a deposit of \$1150.00. He checked against that account for \$600.00 to pay Sylvester and borrowed \$600.00 in addition to that, at any rate there was drafts or securities from the bank that was given to Sylvester for that amount at that time. And then prior to that time there was another check for \$100.00 to Sylvester, making \$1300.00 between the 25th of January, 1905, and the 10th day of June, 1905.

Q From your examination of the books and accounts of that bank are you able to state of what that deposit of \$1150.00 consisted?

A I am.

Q State?

A On January 19, 1905, Mr. Yungbluth's over-draft consisted of \$1633.67 and Mr. Schafer's over-draft was \$2800.00 and some odd dollars. The books were not balanced between the 19th day of January and the 27th day of January. On the 25th of January, Mr. Yungbluth transferred to Mr. Schafer the property known as the Hamilton Bank Building, and also made a bill of sale of what is known as the bank fixtures. The real estate account of the bank was charged \$3200.00 on account of the Hamilton Bank Building, and also charged \$2100.00 on account of the Hamilton Hotel property. The real estate account was credited with \$700.00 a deduction on vacant lot that had been carried prior to that time on

the books of the bank at \$1200.00. There was also charged to the furniture account \$433.67, there was also charged to the chattel property account \$660.00 and some odd cents, there was also credited to what was known as tax title property 1, which was the same property as Hamilton Hotel property the sum of \$1410.00 prior to that time tax title property had included not only the real estate but also personal property of the Hamilton Hotel.

Q Tax Title Property 1 as carried on the books was the Hamilton Hotel property?

A Yes.

Q Tax Title Property 2 was the Lodge property, and was credited with \$50.00. Schafer's overdraft was credited.

A \$1600.00 and Mr. Yungbluth's over-draft was wiped out. Yungbluth when the transaction was through received a credit on the books of \$950.00, and Yungbluth had taken out of the assets of the bank prior to that time on Lodge property and had against him a debit of \$340.00, but which said debit on the books against the property being deduced by rents \$50.50, which said property was charged off the books and accounts to Mr. Yungbluth. Then about March, 1905, Mr. Yungbluth was credited on the books of the bank again with \$200.00, for a certain gas machine, that was charged in chattel property account, which was the second gas machine.

Q And that is the method in which the deposit was made up, out of which you say he drew \$600.00 to pay Sylvester?

A That was the nature of the transaction in regard to the matter. The bank property and bank building was put on the books at \$3200.00 out of which \$1200.00 was credited to the account of Mr. Yungbluth and \$1000.00 to the account of Mr. Schafer.

Q That title stood in whose name?

A Mr. Schafer's.

Q Schafer was the active manager of the bank?

A He called himself cashier.

Q Did the books of the bank disclose any further transaction with reference to this Sylvester deal?

A Yes, I think it was the 22nd day of June, 1905, the \$600.00 note was paid by a check or draft from the First National Bank of Mount Vernon. Then some time after that in 1907 the Bank of Hamilton paid the Mount Vernon bank \$500.00 and Mr. Yungbluth gave his note to the Hamilton Bank for \$500.00, and that \$500.00 note was turned over by me to the Trustee.

Q The net result of those transactions as shown by the books of the bank was all the money which was invested in the Sylvester property was with drafts from the Bank of Hamilton?

A It was.

EXAMINATION BY MR. MILLION

Q It was charged though to Mr. Yungbluth on the bank books wasn't it?

A It was charged to his account.

MR. ROMAINE:

Q. The result of the transaction was that he had \$900.00 credited to him on the books, that being in excess of the \$1600.00 over-draft?

A Yes.

Q That would change his account, how much?

A It amounted to \$2583.67.

MR. MILLION:

Q. On that same day Mr. Yungbluth gave a deed to Mr. Schafer?

A He did.

Q For the bank property?

A Yes sir.

Q And for Lot 1, Block 8, Cumberland Addition?

A I would not be positive as to that.

Q Also Lots 1, 2 and 3, Block 1, being Hamilton Hotel property?

A I think so, I am not positive.

Q The books showed this transfer?

A The books showed this and that is that tax title No. 1, which was the Hamilton Hotel property was credited with and the real estate was charged with \$2100.00 Hamilton Hotel property, and chattel property account was charged with \$660.00 and some cents.

Q Do you know the date of the note of \$500.00 now held by the trustee that was given by Mr. Yungbluth?

A 1907, I do not remember the date.

Q That was before the bank closed?

A It was a short time before that.

Q And that note was a renewal of a prior note?

A It is my recollection that it was.

Q The books of the bank contained an account known as real estate account?

A They did.

Q Did this account show the various items of real estate which were assets of the bank?

A By tracing through from the changes in the balance book to the journal you could get it.

Q Was the Sylvester property now claimed as a homestead ever shown on the books of the bank as a part of the assets of the bank?

A It was not.

EXAMINATION BY MR. ROMAINE

Q Did Mr. Yungbluth make any deposit in the bank from January until June 1905?

A None, except two. The \$950.00 item that made the balance of the transaction and this under date of January 5, 1905, and the \$200.00 item under date of March 1905, that was credited to him and charged to the chattel property account.

Q It showed no deposit of cash?

A Not at that time or for a long time after that.

MR. MILLION

Q When you were receiver you made a report as to what the books showed as the real estate assets of the bank?

A I did.

Q That did not include the Sylvester property?

A No, it didn't.

Q The report only showed the Schaffer property?

A The report only showed what the books showed and what I found out outside of that.

Mr. Yungbluth was called and testified as follows:

MR. MILLION:

Q What did you give Mrs. Sylvester for your homestead?

A \$1300.00.

Q Where did you get the money?

A August advanced me \$600.00 out of the bank. I gave my note for it and the rest I got in the Mount Vernon bank in June.

Q Did you get anything as the price of the piano?

A I got \$180.00 and turned it to Schaffer on that note.

Q You borrowed \$600.00 from Schaffer and \$600.00 from the Mount Vernon bank and where did you get the \$100.00 which you paid Mrs. Sylvester?

A Mrs. Sylvester was owing me \$100.00.

EXAMINATION BY MR. HADLEY

Q I want to go back to the purchase of the Sylvester property. You say when you bought that property August let you have \$600.00, where did you get the other \$600.00?

A From the Mount Vernon bank.

Q When was that?

A On June 22.

Q When did you buy the property?

A June 10th.

Q Did you pay Sylvester in full at the time you bought it?

A No, I didn't pay him in full until I got the \$600.00 from the Mount Vernon bank. I paid \$600.00 then and \$600.00 on the 22nd, then afterwards the bank paid the Mount Vernon bank back. I sold Norton property for \$800.00 and put that money in Schaffer's bank.

Q When was that?

A Probably nearly one year after.

Q You got the money for six months and then got it again for another six months?

A Between that time I sold that property and paid it off.

Q Did you pay the Mount Vernon bank that note?

A Yes, I paid it myself. I went to the bank myself. I think I did I am not positive, I cannot swear to it. I went to Mount Vernon myself.

Q Then why did you give August's bank a note for \$500.00?

A Security.

Q Security for what?

A Security for \$600.00 which I borrowed from the bank.

Q Didn't you pay the \$600.00 to Mr. Sylvester out of the money in the bank at the time of the purchase. Wasn't \$600.00 charged to your account at that time as having been paid to Mr. Sylvester?

A Oh, I tell you, that note was afterwards.

Q Is it not a fact Mr. Yungbluth when you bought the Sylvester property you gave a check on the Bank of Hamilton for \$600.00 and you borrowed \$600.00 more from the bank and paid for the property, and then you went to Mount Vernon and borrowed \$600.00 and paid the bank of Hamilton?

A Yes.

Q Then the Mount Vernon bank's note was carried for six months and you paid \$100.00 on it and renewed it for \$500.00?

A I do not think so.

Q Well at any rate you renewed the note and then the Mount Vernon bank was paid for by a check from the bank of Hamilton?

A Yes sir.

Upon due consideration the court confirmed the decision of the referee. This matter coming on for the settlement of the foregoing bill of exceptions offered by the bankrupt and it appearing that the trustee has had due notice of the application to settle the same and that all amendments proposed by the trustee have been embodied in the proposed bill and the trustee not appearing and there being no objections to its settlement it is hereby settled and allowed as above set out.

Dated April 2, 1914, at Tacoma.

EDWARD E. CUSHMAN, Judge.

Endorsed. Filed April 3, 1914.

(TITLE OF COURT AND CAUSE)

ASSIGNMENT OF ERRORS

Comes now the bankrupt and makes the following assignment of errors, to-wit:

I.

The court erred in holding that the \$500.00 evidenced by the note now held by the trustee was borrowed from the bank and constituted a fraud on the creditors.

II.

The court erred in holding that the homestead should be subjected to a lien of \$500.00 and interest as represented by said note.

Wherefore the bankrupt prays that said decision be reversed.

MILLION & HOUSER,

Attorneys for Bankrupt, Jacob Yungbluth.

Endorsed: Filed April 3rd, 1914.

(TITLE OF COURT AND CAUSE)

APPEAL BOND

Know all men by these presents: That we, Jacob Yungbluth, as principal, and the United States Fidelity and Guaranty Company, a corporation organized under the laws of the State of Maryland and authorized to transact the business of surety in the State of Washington as surety, are held and firmly bound unto the United States of America, in the just and full sum of Two Hundred and no/100 (\$200.00) Dollars, good and lawful money of the United

States of America, well and truly to be paid, and for the true payment of which we hereby bind ourselves and our and each of our heirs, executors, administrators and successors, jointly, severally and firmly by these presents.

Witness our hands and seals this 2nd day of April, A. D. 1914.

The condition of the above obligation is such, that,

Whereas the above named Jacob Yungbluth has given notice of his intention to appeal from an order of the referee entered in the above entitled matter, establishing certain charges against the homestead of said Jacob Yungbluth, which said appeal has been allowed upon the condition that said Jacob Yungbluth shall file a bond in the sum of Two Hundred Dollars conditioned that he will prosecute said appeal and answer in damages and cash if he fails to make his appeal good.

Now if the said principal Jacob Yungbluth shall prosecute said appeal and shall pay all costs and damages that may be awarded gainst him on the appeal, or on the dismissal thereof not exceeding the sum of Two Hundred and no/100 (\$200.00) Dollars, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

JACOB YUNGBLUTH,

UNITED STATES FIDELITY & GUARANTY CO,

By JOHN C. McCOLLISTER,

Attorney in Fact.

(Seal)

Approved: EDWARD E. CUSHMAN, Judge.

Endorsed: Filed April 3, 1914.

(TITLE OF COURT AND CAUSE)

STIPULATION

It is hereby stipulated that for the purpose of saving expense of printing that the record printed in the above mat-

ter shall serve for both appeal and on petition for revision if petition for revision be made and allowed.

E. C. MILLION and I. E. SHRAUGER,
Attorneys for Bankrupt.
HADLEY, HADLEY & ABBOTT,
Attorneys for Trustee.
ROMAINE & ABRAMS,
Attorneys for Creditors.

Endorsed: Filed April 21, 1914.

(TITLE OF COURT AND CAUSE)

To the Clerk of the above entitled Court: Please prepare a transcript to be used on appeal in the above matter to consist of the following items, and in all cases after the first, or title page, you may omit the title of the court and cause where the same occurs at beginning of each instrument, and insert in lieu thereof as follows: (Title of court and cause). Said transcript to consist of

1. Bill of exceptions.
2. Order confirming referee's decision on exemptions.
3. Assignment of errors.
4. Appeal Bond.
5. Stipulation as to printing record.
6. This praecipe.

Omit all endorsements except date of filing.

Respectfully yours,

E. C. MILLION and I. E. SHRAUGER,
Attorneys for Jacob Yungbluth, Bankrupt.

Due service accepted this 20th day of April, 1914.

HADLEY, HADLEY & ABBOTT,
Attorneys for Trustee.

ROMAINE & ABRAMS,
Attorney for Geo. Henson, Creditor.

Endorsed: Filed April 21, 1914.

(TITLE OF COURT AND CAUSE)

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD

United States of America,
Western District of Washington.—ss.

I, Frank L. Crosby, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify the foregoing printed pages, numbered from 1 to 16 inclusive, to be a full, true, correct and complete copy of so much of the record and proceedings in the above and foregoing entitled cause as is called for by the praecipe of the attorneys for the bankrupt and appellant, as the same remain of record and on file in the office of Clerk of the said court, and that the same constitute the transcript of record on appeal from the District Court of the United States for the Western District of Washintgon to the Circuit Court of Appeals for the Ninth Judicial Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the appellant for preparation and certification of the typewritten transcript of record issued to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, to-wit:

Clerk's fees (Sec. 828 R. S. U. S. as Amended by Sec. 6, Act of March 2, 1905) for making transcript of the record for printing purposes, 33 folios at 30 cents per folio	\$ 9.90
Certificate to certified copy of typewritten transcript of record30
Seal to said certificate40
	\$10.60

I hereby certify that the above cost for preparing and certifying record amounting to \$10.60 has been paid to me

by E. C. Million, Esquire, Attorney for Bankrupt and Appellant.

In witness whereof I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District this 24th day of April, 1914.

(Seal)

FRANK L. CROSBY, Clerk.

*United States Circuit Court of Appeals for the Ninth
Circuit.*

No. 2418.

In the Matter of JACOB YUNGBLUTH, and AUGUST
W. SCHAFFER, Copartners Doing Business Under
the Firm Name and Style of BANK OF HAMIL-
TON, JACOB YUNGBLUTH & CO., Proprietors,
and BANK OF HAMILTON, A. W. SCHAFFER
& COMPANY, Proprietors; and A. W. SCHAFFER
& COMPANY, Private Bank; JACOB YUNG-
BLUTH and A. W. SCHAFFER.

Bankrupts.

Petition for Revision.

To the Honorable Judges of the Circuit Court of Appeals
for the Ninth Circuit:

COMES NOW Jacob Yungbluth, the bankrupt, and re-
spectfully petitions this court for a review and revision
of an order made and entered by the District Judge for
the Western District of Washington, Northern Division,
made and entered on the 2d day of April, 1914, and in
support thereof shows to the Court as follows:

I.

That heretofore your petitioner was by said Court ad-
judged a bankrupt and thereafter filed his schedules
claiming certain exemptions including a homestead.

II.

That thereafter the trustee set aside said property as
exempt and thereafter on the objection of certain cred-
itors and said trustee the referee before whom said
proceeding was pending did make an order charging
said homestead with \$500.00 and interest as shown by a
note given by your petitioner to the Bank of Hamilton.

III.

That thereafter and upon appeal from said order of said referee to said District Court the same was affirmed.

IV.

Your petitioner charges that said referee and said District Court committed greivous error in holding that said homestead should be charged with said \$500.00 and interest and directing a sale of said homestead to pay the same.

WHEREFORE your petitioner prays that said order of said District Court and said referee be set aside and held for naught and that said homestead as so awarded be adjudged to be free and clear of any claim of the trustee or any creditor whatsoever, and that your petitioner be granted any other, further and different relief to which he may be entitled.

E. C. MILLION,

Attorney for Bankrupt.

Postoffice Address, 1202 Hoge Building, Seattle, King
County, State of Washington.

United States of America,
Western District of Washington,
Northern Division, King County,—ss.

E. C. Million, being first duly sworn, upon his oath deposes and says that he is attorney for Jacob Yungbluth, petitioner above named, and that the facts set forth in said petition are true as affiant verily believes. That affiant makes this verification on behalf of petitioner for the reason that the facts therein stated are within the personal knowledge of affiant and not within the personal knowledge of the petitioner.

E. C. MILLION.

Subscribed and sworn to before me this 23 day of May, 1914.

[Seal]

GEORGE FRIEND,

Notary Public in and for the State of Washington, Residing at Seattle.

[Endorsed]: No. 2418. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Jacob Yungbluth and August Schafer, Copartners Doing Business Under the Firm Name and Style of Bank of Hamilton, Jacob Yungbluth & Company, Proprietors, and Bank of Hamilton, A. W. Schafer & Co., Proprietors, and A. W. Schafer & Co., Private Bank, Jacob Yungbluth and A. W. Schafer, Bankrupts. Petition for Revision. Filed May 26, 1914. Frank D. Monekton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit. By Meredith Sawyer, Deputy Clerk.

